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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
GARY CRUZ and CLAUDE PAIN, Individually  
and on behalf of all others similarly situated,

Plaintiffs,

10 Civ. 8026 (PKC)

-against-

ORDER

T.D. Bank, N.A.,

Defendant.  
-----x

CASTEL, U.S.D.J.

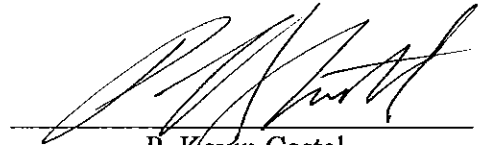
The Court has a letter from plaintiff's counsel in which he reports that, following the dismissal order of November 7, 2014, he "called chambers and was instructed to file a letter request to this Court regarding this matter." Counsel's point seems to be to show his diligence by "promptly" complying with the Court's "instruct[ion]."

Plaintiff's counsel is welcome to submit an affidavit on the issue but the undersigned is dubious of the claim. Far more plausible—and consistent with standard chambers' practices—is that plaintiff's counsel called chambers with a question and/or request and was told that any such question or request should be put in writing and sent to the Court, implicitly with a copy to opposing counsel. Plaintiff's counsel thereafter did so. That is a far cry from the Court instructing plaintiff's counsel to file anything.

Plaintiff's counsel may file a motion to vacate the Judgment and simultaneously move to file an amended complaint. Defendant may respond in accordance with the local rules. No pre-motion conference will be necessary.

In any such motion, plaintiff's counsel should address whether he, on behalf of his client, made the strategic decision to proceed in a timely fashion with the "three other similar EIPA putative class actions," but have this action lag behind in order to avoid having this Court rule on any presented issues in advance of the other judges, as apparently occurred in the past.

SO ORDERED.

  
P. Kevin Castel  
United States District Judge

Dated: New York, New York  
November 13, 2014